

EXHIBIT 1

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3
4 E. Jean Carroll,)
5 Plaintiff,)
6 vs.) Case No.
7 Donald J. Trump,) 1:22-CV-10016-LAK
8 Defendant.)
9 _____)
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14 VIDEO DEPOSITION OF ROBERT J. FISHER

15 Via Zoom Videoconference

16 Monday, February 6, 2023
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21 Reported by:

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25 JOB NO. 222071

1 In Carroll II, as you're talking
2 about, I was asked to do just an expert
3 report, and it had nothing to do with
4 rebuttal reports but do an expert report in
5 that case.

6 Q. And by you were asked, you were
7 asked by defendant's counsel; is that
8 correct?

9 A. Yes, that's correct.

10 Q. Mr. Fisher who's on the line
11 today -- I'm sorry. Mr. Swift.

12 A. Mr. Swift, yes. He can claim my
13 name. That's fine.

14 Q. So is it your testimony that your
15 report in Carroll II which was dated
16 January 30, 2023, was not a rebuttal report?

17 A. No, not at all. No. In Carroll I,
18 I was specifically retained to do -- as a
19 rebuttal expert, and my main task was to do
20 a rebuttal report, and we had two
21 subsequent -- or one deposition over two
22 periods.

23 In rebuttal II after the
24 plaintiff -- I'm sorry. In Carroll II when
25 the plaintiff refiled, they asked me to do

1 an expert report which had nothing to do
2 with rebutting anything. It was just
3 strictly to do a report on -- as an expert
4 in that case.

5 So the first one was a rebuttal
6 report. The second one was a plain expert
7 report.

8 Q. Okay.

9 So your position is that your
10 report in Carroll II is not a response to or
11 rebuttal of Professor Humphreys' report in
12 Carroll II?

13 A. No. In fact, I didn't even read --
14 Professor Humphrey did two reports. She did
15 a rebuttal report -- or she did a report on
16 the June 21, June 22, and June 24 statements
17 of Mr. Trump. I wrote -- and then she filed
18 a report on that. I wrote a rebuttal report
19 on that.

20 Subsequently Mr. Trump made other
21 statements on October 12, 2022, of which
22 case subsequent to that, the plaintiff filed
23 a second lawsuit which included battery I
24 think, as well as defamation. I was asked
25 after that to do a full expert report based

1 on her, you know, her new complaint
2 addressing defamation. None of it has to do
3 anything -- Professor Humphreys subsequently
4 did a second report based on the October 12
5 statement. I was not asked to do a rebuttal
6 report on her second report and, as a matter
7 of fact, I didn't even read it. I skimmed
8 it, but I'm not here to talk about her
9 second report.

10 Q. Understood.

11 A. Okay.

12 Q. And so I'm going to -- we'll mark
13 this as Fisher 1.

14 (Exhibit Number 1 was marked
15 for identification.)

16 BY ATTORNEY CRAIG:

17 Q. The court reporter just handed you
18 a document marked as Exhibit 1. Is this the
19 report you prepared in Carroll II and issued
20 on January 30, 2023?

21 A. That's correct.

22 Q. Okay. How many hours did it take
23 you to draft this report?

24 A. I don't know exactly, but I'm going
25 to guess probably around 12, 15 hours.

1 Q. When you say you were approached by
2 a case with Meghan Markle, do you mean
3 Meghan Markle approached you or someone who
4 is looking to sue Meghan Markle?

5 A. Yes, her half sister. It's gotten
6 a lot of public exposure already. But, yes,
7 it's a case where Meghan Markle's half
8 sister is suing her for defamation. Based
9 on a book and interviews that she did on
10 Oprah and with, you know, various interviews
11 she's done along with Harry, she's basically
12 made claims about her family, both her half
13 sister and father, that aren't true. The
14 father is not part of the suit, but the half
15 sister says that her reputation has been
16 damaged by the false statements that
17 Ms. Markle has made.

18 Q. And has your approach to your work
19 as an expert changed since your Carroll I
20 deposition in any way?

21 A. No, no. I've been -- no, the
22 answer is no. I mean, I've had 80 cases
23 over 17 years, and I'll end there because
24 you like yes or no answers.

25 No, it hasn't changed. I try to

1 give context and perspective when I guess
2 it's not needed sometimes.

3 Q. Have you developed any new methods
4 or methodologies or techniques as part of
5 your work since your Carroll I deposition?

6 A. No, because those methodologies are
7 rock solid. There's no reason to reinvent
8 the wheel when they are accepted
9 methodologies, and they're effective
10 methodologies.

11 Q. And would you say your methodology
12 in Carroll II is similar to your methodology
13 in Carroll I?

14 A. I would say so, yes.

15 Q. Okay.

16 And if we can look at your report
17 which is Exhibit 1 which you still have in
18 front of you, I just had a -- on page 2 --

19 A. Oh, they're back and back. That's
20 unusual. Okay. I went from 1 to 3, and I
21 thought a page was missing. Yes, go ahead.

22 Q. Do you see there's a section in the
23 middle of the page with the title Media
24 Expert/Analysis?

25 A. Yes.

1 Q. And then three of them are from
2 right after his October 20, 2022, alleged
3 defamatory statement; correct?

4 A. Yes.

5 Q. And how did you identify these six
6 particular articles?

7 A. I don't understand what you mean by
8 identify.

9 Q. How did you choose to review these
10 six articles as opposed to a different set
11 of six articles?

12 A. Well, as I mentioned last
13 deposition, they were representative. I
14 looked at a lot more articles than that,
15 but, I mean, most of the articles were
16 exactly the same. I mean, different
17 publications, different reporters but
18 basically information provided was exactly
19 the same.

20 In other words, I could have read
21 20 articles that were no different. So I
22 picked two or three out that were
23 representative of them.

24 And I didn't see the need to list
25 every article that I looked at given that

1 most of them were rubber stamps of the
2 others. It didn't seem to be productive or
3 needed.

4 Q. So is it your testimony that you
5 relied on articles besides these six in
6 forming your opinion or that these are the
7 only six that you relied on in forming your
8 opinion?

9 A. Well, I don't know what you -- I
10 quibble with the word relied on, quite
11 frankly. I looked at media articles to see
12 how they were addressing this situation. I
13 mean, were they doing it straight arrow,
14 just totally objective? Were they slanting
15 it to one side or the other, slanting it to
16 the plaintiff's side or defendant's side?
17 So I was just basically trying to get a feel
18 of what the -- of how the press was handling
19 this situation, and that was the purpose of
20 it. And I felt that these six -- I didn't
21 feel I needed to list 30 articles because
22 these six were certainly representative of a
23 whole.

24 Q. But in terms of the analysis you
25 just described, that analysis applies to

1 these six articles, or did you analyze other
2 articles that you haven't disclosed in your
3 report?

4 A. I don't know if the word analyze is
5 appropriate. I've read other articles. As
6 I've said, since they were mirror images of
7 these articles, they didn't offer anything
8 new or substantive that would have required
9 me to put them down.

10 In other words, if you have ten
11 articles and every word has -- every one has
12 the exact same words in them, there's no
13 reason to list ten. You can just list a
14 representative sample of them.

15 Q. Is it your testimony that every
16 other article that you read has the exact
17 same words as these six articles?

18 A. Not exact words. Don't take it
19 literally. What I'm saying they covered the
20 same subjects. They covered the -- they
21 were reporting the same facts.

22 Q. So, Mr. Fisher, I think you
23 testified yes, but let me make sure I've got
24 it right. You're familiar with the
25 requirement that an expert witness disclose

1 in their report the facts or data considered
2 in forming their opinion. Are you familiar
3 with that requirement?

4 A. Yes, I am.

5 Q. And besides these six articles, did
6 you consider any other articles in forming
7 your opinion?

8 A. No.

9 Q. Okay.

10 A. Because they were all the same as
11 these. Once I read the first one, and then
12 I read all the others that were the same, I
13 didn't consider them.

14 Q. Okay.

15 And the next header down on this
16 page 12 of Exhibit 1, you'll see it says:
17 Internet research?

18 A. Yes.

19 Q. And you write: During the course
20 of this assignment, I conducted research to
21 review information on the internet that
22 might be pertinent to the litigants and the
23 lawsuit as well as to seek clarification and
24 definition of various subjects.

25 Do you see that?

1 at out of curiosity. It doesn't affect my
2 findings, whatever, but it's just curiosity.

3 Q. In this case are there any internet
4 sources that you reviewed that aren't listed
5 in your report in any way?

6 A. Well, I didn't list the -- I didn't
7 list the -- you know, in this case -- well,
8 this case involved individuals, not
9 companies. It involved Mr. Trump and
10 Ms. Carroll; so I wasn't looking up websites
11 of businesses or anything. I didn't look up
12 Trump's website, for instance, and I don't
13 even know if Carroll has one. So I guess
14 not, no.

15 Q. So are there any internet sources
16 that you considered that are not disclosed
17 in this report that you think are relevant
18 to your opinions or findings in the report?

19 A. No. I think the only type of -- in
20 all the types of research -- by the way,
21 there's one other type of research I didn't
22 get to finish. That's as I'm writing a
23 report, I'll research for spelling of words
24 or is one word better than another and all
25 that.

1 it's relevant to the case, yes, I do list
2 it.

3 But usually that only comes in the
4 form of media articles for the most part.

5 Q. And those relevant media articles
6 in this case are the six that we are talking
7 about before?

8 A. Yeah. One other thing too is if I
9 come across a legal document on the internet
10 which they haven't provided me, then I would
11 put that down as well. I would record that
12 because that's -- that's specifically
13 related to the case as opposed to the
14 background and what products this company
15 makes.

16 Q. Were there any legal documents in
17 this case that you found through your
18 internet research that you didn't -- that
19 you listed here?

20 A. No, there were none in this case
21 that I -- sometimes I come across, not often
22 but not in this case, no.

23 Q. Approximately how long did you
24 spend on your internet research in
25 connection with your Carroll II report?

1 A. I would say at most an hour,
2 maybe -- I'd say a half hour to an hour and
3 a half is generally for most cases, you
4 know, I just do a cursory look at -- you
5 know, I Google whatever it is, and then I
6 look down, scroll down and look and see if
7 there's anything.

8 So I would say 45 minutes to an
9 hour and a quarter would be average.

10 Q. Average in all your cases?

11 A. Yeah, in most cases.

12 Q. In this case 30 to 60 minutes?

13 A. Yeah, unless something like the one
14 case I had which I won't mention the name
15 of, there were like 2- or 300 media articles
16 on; so I probably spent three or four hours
17 on that. But that's a rare case.

18 Q. Are there any parts of your report
19 that are based on the internet research that
20 you did in connection with this case?

21 A. I would say -- I would say no
22 except maybe -- no, I mean, the legal
23 documents, complaints gave me information.
24 Deposition. I got a lot of good information
25 off the depositions. And the expert report.

1 I would say off the internet
2 possibly if I got one of those articles off
3 the internet, I don't know -- as I sit here,
4 I don't remember where the articles came
5 from, but I would have listed it, and that
6 would have been a factor.

7 Q. In terms of the legal documents
8 that you list here, I know a number of them
9 were also listed in your rebuttal report in
10 Carroll I.

11 A. Probably most of them.

12 Q. Did you re-review the documents in
13 connection with preparing your Carroll II,
14 or did you list them because you previously
15 considered them?

16 A. Yes -- no, I didn't re-review
17 anything. I just listed -- anything
18 important in them I would have had in my
19 original rebuttal report or in my notes, the
20 notes I take when I read things. So there's
21 no need for me to go back and look at the
22 original documents.

23 Q. And elsewhere in your report you
24 refer to the idea that you reviewed and
25 analyzed previous applicable experiences

1 that you've had in your professional
2 communications and expert witness
3 backgrounds. Are there specific previous
4 applicable experiences you drew upon in
5 preparing this Carroll II report?

6 A. I think I mean that in a general
7 sense as opposed to individual cases. No, I
8 can't say that there was a specific case or
9 more than one case. It's more or less the
10 broad overview of circumstances that
11 happened in such cases of this type.

12 Q. And did you review any files from
13 prior cases in connection with your Carroll
14 II report?

15 A. No, not in writing this report, no.

16 Q. Okay.

17 And you also write in your report
18 that you don't rely on, quote, surveys,
19 studies, tests, research, or other forms of
20 qualitative types of analyses, facts
21 gathering procedures. Is that sort of a
22 fair reflection of the type of materials you
23 didn't consider in connection with your --

24 A. Yes.

25 Q. -- Carroll II report?

1 A. Yes. I'm sorry to interrupt. I do
2 that often unfortunately.

3 No -- yes, I think all of those
4 things -- some of those things are
5 applicable and need to be -- need to be
6 done. But as I said in a previous
7 deposition, this wouldn't be the time to do
8 it. In other words, I think it's -- I
9 have -- like when I do reputation --
10 reputation damage programs, then it's
11 important to do that. But it's important to
12 do it at the time the program is to be done,
13 not prior.

14 I don't need to do those kind of
15 things basically to assess, you know, the
16 type of damage that our -- you know.

17 For instance, what if you go out in
18 the street --

19 Q. Just --

20 A. Okay. Right.

21 I think there's a need for those
22 but not necessarily at this point in time
23 and further down the line.

24 Q. In going back to -- it's on page 11
25 of your report, Exhibit 1, at the bottom

1 it -- you write: Partial review. Next up,
2 Professor Humphreys Carroll II report.

3 What did you mean by partial
4 review?

5 A. I spent two minutes looking at it.

6 Q. Okay.

7 A. Basically what I did is -- unless
8 you just want me to say -- basically what I
9 did is skim through the report to see how it
10 compared to her original report that I was
11 tasked to analyze and brought on.

12 So, in other words, her basic
13 opinions, concepts, whatever. So I took
14 maybe two, three minutes, and I went through
15 it, just scrolled through it. This report
16 was shorter than her first one. And I just
17 scrolled through it to see if the same --
18 she was offering the same line of thinking
19 and opinions as she did before.

20 Q. Were you directed to only do a
21 partial review of Professor Humphreys'
22 report?

23 A. No, I wasn't directed to do
24 anything with her second report. I mean, I
25 was provided it by Mr. Swift, but he didn't

1 give me any direction as to what to do. He
2 said -- she did another report based on the
3 October 12 thing.

4 I mean, he didn't ask me to read it
5 in total. He didn't ask me to comment on it
6 or anything. He just said -- I assume he
7 just thought it would be good for me for
8 background.

9 Q. Are there any parts of Professor
10 Humphreys' Carroll II report that you sought
11 to rebut in connection with your Carroll II
12 report?

13 A. No, not at all. But I did -- I do
14 have a section in this report, which I'm
15 sure you're aware of, that does discuss
16 Ms. Carroll's expert, but most of that is
17 information derived from the first report,
18 is basically on her views and opinions.

19 I did put one paragraph into this
20 report. The only thing I picked out of that
21 report in skimming it was a statistic that
22 she had related to the number of people that
23 might be influenced by Mr. Trump's comments.
24 And that's near the end of the report.

25 You know, I just made a reference

1 Q. Understood.

2 And in the skimming that you
3 referred to before of Professor Humphreys'
4 report, was that just the body of the
5 report, or did you also skim the appendices?

6 A. Oh, I didn't look at the
7 appendices. I just looked at the report
8 itself from the top to the bottom. In other
9 words, I just scrolled down the report.

10 For instance, her introduction of
11 herself was the same. You know, her
12 qualifications was the same as before. I
13 just wanted to see if her second report was
14 consistent with the first in terms of her
15 general opinions and conclusions. And it
16 was.

17 Q. And did you run a redline of the
18 two reports?

19 A. I don't know what you mean running
20 a redline.

21 Q. That's fine.

22 Did you receive a link to the
23 folder that Professor Humphreys provided on
24 a cloud content management site called Box?

25 A. What, from Mr. Swift?

1 Q. Yes.

2 A. A link to a folder that Professor
3 Humphreys did called Box?

4 Q. Through a site called Box?

5 A. No, I never received anything like
6 that.

7 Q. Okay.

8 In connection with your Carroll II
9 report, did you do any analysis to calculate
10 the total number of times Mr. Trump's
11 October 12, 2022, statement was viewed?

12 A. We're going to go through this
13 again.

14 No, I didn't.

15 Q. So you have no idea how many people
16 actually saw or read Mr. Trump's October 12,
17 2022, statement about Ms. Carroll?

18 A. No. But I do know that it was on
19 his Truth social which he has 2 million
20 people I think. I'm not sure, but I assume
21 knowing that he has a very dedicated fan
22 base and that he has his own since he got
23 kicked off Twitter, I assume a fair amount
24 of people saw it. It doesn't matter to me
25 whether it was a hundred thousand or

1 correctly, is it your testimony -- did you
2 see it as your role as an expert to sort of
3 look at the statement standing alone to
4 assess sort of the degree of harm that a
5 statement like that could cause?

6 A. Well, for a large part, yes. I
7 mean, what my job was to analyze two issues:
8 One is were the statements defamatory.
9 Again, not making a legal conclusion or
10 anything, but I am a communications expert,
11 and I can read what the New York law is
12 relating to defamation, and I can form my
13 own opinions on whether they were false
14 statements or not.

15 The second thing is whether they
16 were false statements or not, that's for a
17 jury to decide. It's not for me to decide.
18 That's what the trial is for and for the
19 jury to decide.

20 But looking at it, whether they're
21 false or not, did they cause reputation harm
22 to the plaintiff?

23 Now you're talking about magnitude
24 here. What you're talking about is
25 magnitude. Did 50 people see it or did

1 popularity polls and whether they are going
2 to vote for him, but I've never seen a poll
3 that was taken of a person. I don't know
4 that any polls exist, so it's hard for me to
5 research.

6 Q. Have you ever looked for any polls
7 about the media habits of Donald Trump
8 supporters?

9 A. No, because I'm pretty sure I know
10 what they are. Try Fox News.

11 Q. Just turn back to page 11 in your
12 report.

13 A. I wish these were not front and
14 back.

15 Q. I share your preference.

16 A. Yeah, it's a lot easier to thumb
17 through.

18 Q. On page 11 of Exhibit 1 in the
19 middle of the page, there's a header that
20 reads, Information input reviewed to form
21 opinions.

22 Do you see that?

23 A. Yes, I do.

24 Q. And then under that it says: I
25 have received and reviewed from the

1 plaintiff's legal counsel the following
2 documents and information.

3 Did you mean defendant's legal
4 counsel?

5 A. Yes.

6 Q. I just wanted to make sure.

7 A. Sometimes I try save a little money
8 by using -- by cutting and pasting a little
9 bit. That one got by me.

10 Q. Are there -- I guess just on that
11 topic, are there other parts of your report
12 that you draw from other reports in terms of
13 background or whatever it might be?

14 A. Well, yes. There's some things.
15 For instance, page 12 and 13. I mean,
16 there's things -- I still read over these
17 things when I go through, you know, the
18 report, but I would say the section analysis
19 of opinion -- I mean, I'd say the section
20 internet research, sources to obtain the
21 information, analysis of opinion, preface,
22 methodology -- well, no, I take it back.

23 Some of these I do change these.
24 But the basic framework of these are pretty
25 much the same although I do add -- for

1 instance, under methodology, I change that
2 from time to time. I add things in, take
3 things out.

4 But yes, I mean, the bottom line is
5 since I approach every case the same way
6 basically, whether I'm representing a
7 plaintiff or defendant, you know, that kind
8 of thing, there are certain things that are
9 applicable to every case I do.

10 And I don't believe in charging my
11 client -- reinvent the wheel and charge my
12 client extra hours to retype the information
13 that I already have. I missed that
14 plaintiff/defendant thing. I feel bad about
15 that.

16 Q. If we turn to page 12 under that
17 paragraph that has the header, Preface, the
18 last sentence reads: Where there is a
19 disagreement since I was retained by the
20 plaintiff, I will presume that the
21 information provided on their behalf is
22 correct and will base my conclusions and
23 opinions on it being true unless I am aware
24 of -- or will be subsequently provided --
25 evidence to the contrary.

1 In that sentence did you mean
2 defendant as opposed to plaintiff as well?

3 A. Yes, obviously, yeah.

4 I was told that by several lawyers
5 that concept there. Several lawyers have
6 told me that in various cases.

7 Yes, I meant for that to be
8 defendant as well.

9 Q. What parts of your report or
10 opinion are based on a presumption that the
11 information provided by defendant is true?

12 A. Well, none really. In other
13 words -- in other words, as I said, this is
14 a he said/she said case. In the case
15 there's really no collaborating evidence --
16 there's no outside collaborating evidence on
17 either side like with the rape. Did he rape
18 her or didn't he rape her? There's no
19 evidence any way whether it happened or
20 didn't happen. It could have happened, or
21 maybe it did, maybe it didn't.

22 The point is some cases that I've
23 had that there was a lot of gray area the
24 best way to term it. And I've had to, but
25 in this case there wasn't any of that. You

1 had the plaintiff making certain statements
2 and the defendant -- I didn't particularly
3 look at Mr. Trump's statements as being true
4 or not. I looked at most of these
5 statements and the fact that there was no
6 outside collaborating evidence, that -- in
7 some instances there was no outside
8 collaborating evidence, so I don't know
9 what's true. So I didn't take his side or
10 the other side. I don't know what's true.

11 In others, I think they were
12 clearly opinion. I don't think they were
13 statements at all. I think they were
14 clearly opinion.

15 Q. If we turn to page 14 of your
16 report. And at the top you have a section
17 titled, Defamation Damages.

18 Do you see that?

19 A. No, I don't. I see a section that
20 says, Defamation Definition, not damages.

21 Q. Sorry. My mistake. Let me restate
22 the question.

23 At the top of page 14, do you see a
24 section with the title, Defamation
25 Definition?

1 down on that same page, page 14 of your
2 report, there's a section that's titled
3 Analysis of Statements.

4 Do you see that?

5 A. Yes, I do.

6 Q. And this goes on for a couple of
7 pages. In this section of your report are
8 you offering your opinion on whether or not
9 Mr. Trump's statement about Ms. Carroll
10 satisfies the elements of defamation you set
11 forth above?

12 A. I wouldn't say the word opinion. I
13 would say assessment.

14 Q. What's the difference between --

15 A. Well, I mean, you know -- well,
16 yeah, opinion I think is a little bit of a
17 stronger word.

18 Yes, it basically answers yes to
19 that. I'm a reasonably intelligent person.
20 I can look at what the -- what something
21 is -- is purported to fit a certain criteria
22 is to be considered defamation, and I can
23 analyze what the specific statements are and
24 offer my assessment of whether I feel it
25 meets that. I'm not offering a legal

1 is some -- an assessment I have of how I see
2 it.

3 You know, I'm not shoving it down
4 their throat. I mean, I'm adding a little
5 more -- people are not sophisticated.
6 People on juries are not sophisticated in
7 communications. I mean, they can be
8 housewives, they can be plumbers, they can
9 be architects, they can be engineers,
10 whatever. They're experts in their areas or
11 whatever, but they're not sophisticated.
12 Lawyers aren't sophisticated in
13 communications either. Lawyers are the
14 worst I've seen.

15 But the point being is I'm there as
16 an expert witness. My field of expertise is
17 communications. I'm not trying to ram
18 anything down their throats. I'm just
19 saying that from a communications standpoint
20 as being an expert, this is my analysis or
21 this is a thing. And you can factor that
22 in, ignore it, factor it in if helps you
23 give some insight or perspective or context
24 what the statements are about, all the
25 better.

1 in this part of your report under analysis
2 of the statements you're offering an expert
3 opinion or something different?

4 A. No, I'm not offering expert
5 opinion. It's not my job to offer an expert
6 opinion.

7 As I said, if you go through these
8 items one by one, you'll see -- I mean, I do
9 comment at the end of each one. Some of it
10 I include testimony. I include different
11 things in here, additional information that
12 the jury can decide from Trump's testimony,
13 from Carroll's testimony from, you know,
14 from various factors. I'm trying to give
15 them a broader picture from which they make
16 a decision on.

17 This is my assessment. Whether
18 expert opinion, I think maybe we're
19 splitting hairs a little bit in here. But I
20 mean, it is my assessment. I agree with
21 you, opinion is, you know, sort of saying
22 the same thing. But, yeah, I mean, it is my
23 opinion as an individual as an expert.

24 Q. And it's your position that as an
25 expert you're permitted to testify to

1 hearing from many multiple people.

2 Q. Mr. Fisher, if you can just answer
3 my question.

4 What's the difference between the
5 question -- so the jury will have to ask
6 whether or not Mr. Trump's statements meet
7 the criteria for defamation. And it says
8 here that you are offering your assessment
9 on whether or not Mr. Trump's statements
10 meet the criteria for defamation. I'm
11 wondering what's the difference between the
12 question the jury will ask and the question
13 that you are purporting to answer?

14 A. Probably no difference at all. But
15 then I'm not the decision maker, and I'm not
16 telling them to make that decision.

17 As I said, they're going to hear
18 from Professor Humphreys. They're going to
19 hear from other people. I'm one factor.
20 I'm not like a mosaic. I'm one piece of a
21 puzzle or whatever. They're going to hear a
22 lot of pieces of puzzle, and it's their job
23 to listen to everyone and make an informed
24 decision.

25 Q. In your Carroll I report that we

1 went over in your last designation, that
2 also had a section that was entitled
3 Analysis of Statements.

4 Do you recall that?

5 A. Yes, I do.

6 Q. Is what you're doing in your
7 Carroll I report with respect to analysis of
8 statements the same as what you're doing in
9 your Carroll II report with respect to the
10 analysis of statements?

11 A. Yes, but the statements are a
12 little different.

13 Q. Of course.

14 A. I'm doing the October 12. There
15 were several things that he covered in his
16 June 21, 22, and 24 statements that aren't
17 in the October 12. I focused on the
18 October 12 statements here.

19 Q. But the type of the analysis is the
20 same?

21 A. Generally, yeah. The format,
22 generally, yeah.

23 Q. And were you asked to perform an
24 analysis of the statements regarding whether
25 or not they met the criteria for defamation?

1 Q. Toward the -- right at the bottom
2 you write: There is no evidence that the
3 defendant assaulted or raped the plaintiff.
4 It cannot be a false statement to deny some
5 action that hasn't been proven to have taken
6 place.

7 Do you see that?

8 A. Yes.

9 Q. Is it your opinion that Trump's
10 denial of the rape is true or currently
11 true?

12 A. We don't know. Nobody knows.
13 There is no -- she -- he could have raped
14 her or he may not have raped her. No one
15 knows. I mean, I've pored through
16 everything trying to find something that
17 would sway my thought one way or the other,
18 but the point is all you have is her
19 accusation and his denial.

20 We don't know if she's telling the
21 truth or he -- no one. I haven't seen -- if
22 you've got any evidence or people that say
23 they saw it happen or forensic evidence or
24 she had gone to the hospital and there was a
25 rape kit -- this is -- it's like me. If I

1 A. I don't know. It's not false
2 because -- I don't know if it's true or not,
3 but it's not false because there's no
4 documentation that the event ever occurred.

5 Q. So is it your opinion that when a
6 person denies sexually assaulting or raping
7 someone, is it your position that person is
8 telling the truth unless it has been proven
9 in court that they actually did rape that
10 person?

11 A. Not necessarily in a court, but
12 there's some evidence of it, yes.

13 I mean, a false statement -- a
14 statement as opposed to an opinion -- a
15 statement is something that can be proven
16 true or not true. That's the difference
17 between an opinion and statement.

18 Q. And do you think Mr. Trump's
19 statement that he didn't rape Ms. Carroll is
20 a statement or an opinion?

21 A. Well, it's an opinion of his that
22 he didn't do it. I mean, it's --

23 Q. What part of raping someone
24 involves an opinion?

25 A. Well, there has to be -- there has

1 to be confirmation that the act happened in
2 the first place.

3 Q. Is Ms. Carroll's testimony
4 sufficient to prove that the act happened in
5 the first place?

6 A. No. I don't know where you're
7 coming from to be honest with you,
8 Mr. Craig.

9 You're trying to tell me that
10 anyone that accuses someone of something is
11 telling the truth, and that's the -- I mean,
12 any accusation is true? I'm sorry. Maybe
13 we're on different -- we're on different
14 planes. I don't understand.

15 If that were true that
16 everybody that accused someone of doing
17 something wrong, would the other person go
18 to jail instantly?

19 ATTORNEY SWIFT: I'm sorry. Let me
20 jump in one more time.

21 Mr. Fisher, Mr. Craig cannot answer
22 your questions.

23 THE WITNESS: I understand. That
24 was rhetorical, Mr. Swift. That was
25 rhetorical.

1 The bottom line is unless there's
2 some evidence that something happened,
3 there's no way you can tell whether
4 Ms. Carroll was telling the truth or
5 Mr. Trump was telling the truth.

6 BY ATTORNEY CRAIG:

7 Q. And the evidence that you're
8 referring to can't be Ms. Carroll's
9 testimony. Is that what you're saying?

10 A. No, not by itself. The point is
11 what would this world be like if people were
12 making accusations and everybody assumed
13 they were true? The bottom line is there is
14 no fact -- there's no fact in this case.
15 The fact would be that the rape occurred or
16 didn't occur. There's no -- there's no
17 fact. I mean, one side is saying something
18 and the other side is saying something.

19 Q. If all the jury heard in this case
20 was Ms. Carroll's testimony that the rape
21 did happen, that wouldn't be enough to prove
22 defamation?

23 A. No. If I'm sitting on the jury and
24 the woman is on the stand and said I was
25 raped, and there's no -- there's no evidence

1 that she was raped whatsoever, I wouldn't
2 consider the other side denying it as being
3 defamatory.

4 Q. And so sitting here today, is it
5 your position that Trump's denial of the
6 rape cannot be false?

7 A. It may or may not. It has to be
8 proven to be false. She's making the
9 accusation he made a false statement. We
10 don't know if it's a false statement or not.
11 She doesn't know -- I mean, in her mind she
12 may. So yes. No, you can't declare it as a
13 false statement because there's no fact base
14 to judge whether he's telling the truth or
15 not.

16 Q. And Ms. Carroll's testimony isn't a
17 factual basis to judge --

18 A. No.

19 Q. -- whether he's telling the truth
20 or not?

21 A. No.

22 Q. Why not?

23 A. Because an accusation of something
24 is -- are we to take her word for it? No,
25 it's not.

1 police will go out and arrest the person and
2 try them and convict them just based on the
3 one person's accusation. That doesn't
4 happen.

5 Q. On page 15 of your report, you
6 write: Whether Trump knew her or not is
7 unknowable barring a third person
8 documenting this was true, and I have not
9 seen any evidence of that.

10 A. Yes --

11 Q. These could not be false statements
12 unless there's verification that they indeed
13 knew each other.

14 A. Yes.

15 Q. What do you mean by verification in
16 that?

17 A. Yes, this is the same exact concept
18 as the last one. The point is she says
19 Trump knew her. He says he didn't. What I
20 find hard to believe is if she did know
21 Trump, somebody else must have known that
22 they knew each other, somewhere. Somebody
23 must have witnessed them talking or know.
24 Therefore, why -- I haven't seen any
25 affidavits or declarations from her, from

1 friends or somebody that says, oh, yeah, I
2 know she knows Trump. I've seen them
3 talking at parties or this or that.

4 The bottom line is their
5 relationship it's hard to believe strictly
6 no one else witnessed their knowing each
7 other except the two of them. It just seems
8 to be somewhere along the line -- even her
9 husband hasn't come forward.

10 Why hasn't her husband done a
11 deposition and said my wife knows Trump.
12 I've been with them. I've seen them, you
13 know. I know them. Nobody has come --
14 she's basically making allegations with
15 offering no proof. So this is the exact
16 same thing as her accusing him of rape.
17 There's no verifiable evidence or
18 third-party verification or validation that
19 they knew each other. Nobody else has come
20 forward and said, yeah, I know they know
21 each other.

22 Q. Is there a rule of evidence you're
23 relying on that would require evidence from
24 a third party as verification as you call
25 it?

1 A. No, but -- no, not necessarily.
2 But what I'm saying is like the other one,
3 you can't convict somebody of something,
4 whether it be a false statement or rape or
5 anything without verifiable proof that
6 what's being alleged is true. Like she's
7 alleging here that he knew her. Well, he
8 denies it. So who do you believe? Him or
9 her?

10 Q. So is it your testimony that it's a
11 principle of defamation law that proof from
12 a third party would be required to resolve
13 Ms. Carroll's claim about knowing Mr. Trump?

14 A. No, I don't think there's anything
15 in defamation law that addresses that
16 subject at all. Nothing I've ever seen.

17 Q. So where does the principle come
18 from?

19 A. Well, of common sense. Rhyme,
20 reason, logic, common sense or American
21 justice. The American jurisprudence system
22 says a person is considered innocent until
23 proven guilty. That means somebody -- it's
24 not enough to say somebody did something
25 wrong. You have to prove it. You don't

1 send people to jail based on someone's
2 accusation. It's the same concept here.

3 You don't consider somebody defamed
4 someone if they're denying something that no
5 one knows happened or not.

6 And in terms of this, I just
7 find -- this is part -- the rape, I don't
8 know. I have no idea whether he raped her
9 or not.

10 But this one doesn't make sense.
11 If he knew her, there's got to be other
12 people that witnessed their knowledge --
13 that had the knowledge that they knew each
14 other. Why would she not -- I believe in
15 logic, common sense. If she's got a case,
16 why doesn't she bring someone forward --
17 it's not my job to determine this. Why
18 doesn't she bring someone forward to say I
19 know that they knew each other. And say
20 why -- I witnessed them talking, sitting in
21 a bar having a drink together, or I saw them
22 at a party talking, or I went over to their
23 house and he was there. I mean, why --

24 Basically what you have is you have
25 one party, Ms. Carroll, making a series of

1 accusations or at least a couple that have
2 no -- there is no fact. There's no
3 verification that it is true.

4 Q. And if Ms. Carroll testifies at
5 trial that she had met Donald Trump before,
6 that's insufficient verification. Is that
7 your position?

8 A. By herself, yeah. I mean,
9 especially if he denies it.

10 Now, we'll go back to this
11 picture --

12 Q. Again, Mr. Fisher, we're trying to
13 keep it confined to the questions.

14 A. Okay.

15 Q. Then on page 16 of Fisher -- your
16 report, Exhibit 1, do you see the final
17 comment under the series of bullets where
18 you write: There is no reckless regard for
19 the truth if there is no, quote, truth to
20 base it on.

21 Do you see that?

22 A. Yeah, 100 percent.

23 Q. And what -- do you understand what
24 the concept of reckless -- I think it's
25 disregard means in the defamation context?

1 Q. I'm just going to read again the
2 part of Exhibit 1. You write: Her
3 allegations of false statements appear to be
4 based on speculation, conjecture,
5 supposition, assumption, presumption, and
6 hypothesizing.

7 So what part of her allegations are
8 based on speculation?

9 A. Well, that's probably misworded a
10 little bit. I'm talking about people that
11 would take her -- I'm talking about how
12 other people would interpret what she was
13 saying. It's probably not -- it's probably
14 not worded properly. I'm not talking about
15 her.

16 Obviously her statements that he
17 raped her are not based on a presumption or
18 a hypothesizing assumption. I'm talking
19 more how other people would interpret what
20 she was saying. I didn't mean that to
21 reference to her. I meant it to reference
22 to other people that would believe what
23 she's saying.

24 Q. So is it your position sort of
25 sitting here today, not in your report, but

1 thing.

2 Speculation and conjecture maybe I
3 got carried away a little bit on wording
4 but yes. You're assuming -- if somebody
5 tells you something that you have no
6 evidence or knowledge is true or not,
7 you're assuming, you're presuming,
8 you're speculating, all of those, that
9 they're telling the truth.

10 They're all -- I didn't have to use
11 all those words probably, but the bottom
12 line is it all basically goes around
13 their accepting that what she's telling
14 them is true because they don't know.

15 BY ATTORNEY CRAIG:

16 Q. And if a jury were to believe
17 Ms. Carroll's allegations of sexual assault,
18 are they also engaging in speculation,
19 conjecture, supposition, assumption,
20 presumption and hypothesizing?

21 A. Yeah.

22 ATTORNEY SWIFT: Objection to form.

23 THE WITNESS: I mean, yes anybody
24 that believes something, whether it's
25 her friend, her doctor, her husband, or

1 the jury, anybody -- now, the jury has a
2 right to do that. If they want to do
3 that, fine. They have a right to do
4 that.

5 In this case when they're faced
6 with a he said/she said situation and
7 they have to make a determination, they
8 can't just say -- well, they can hang.
9 They can say we don't know, but that
10 usually doesn't happen.

11 They are most likely going to have
12 to choose between one of the two. Most
13 likely. They're going to have to see
14 who they believe or not.

15 And since it's not based on any
16 knowledge, any direct knowledge or any
17 concrete evidence or anything that
18 guides them to which is right or wrong,
19 they're making -- they're going to make
20 up in their mind who they believe.

21 BY ATTORNEY CRAIG:

22 Q. If we go down a bit below on
23 page 16 of your report, you write: In
24 summary, after a careful review of all the
25 alleged false statements and negative

1 implications that the plaintiff claims that
2 Trump made, it is my opinion that none of
3 the statements she identified can be
4 determined as being false.

5 Is it not possible to determine
6 whether or not Donald Trump raped
7 Ms. Carroll?

8 A. No.

9 Q. And is it possible to determine --

10 A. You tell me how.

11 Q. Is it possible to determine whether
12 or not Donald Trump and Ms. Carroll met at
13 Bergdorf's that day?

14 A. I haven't seen evidence of it.

15 Q. And is it possible to determine
16 whether or not Donald Trump knew
17 Ms. Carroll?

18 A. That's more likely to be
19 determined. The first two I'd say no
20 because there's no evidence. That one -- if
21 the police or someone did a thorough
22 investigation, they probably -- if a
23 detective got on it or something like that,
24 that's possible to be determined, yes. But
25 so far the plaintiff hasn't done that or

1 But it seems to me that on whether
2 he knew her or not would be easier for
3 someone to ferret out by doing some
4 investigation. I mean, talking to
5 everyone that he knew, talking to
6 everyone that she knew and saying, do
7 you know that you travel in the same
8 social circles. Can you verify that
9 they knew each other?

10 I think if somebody delved into it,
11 which I'm surprising she hasn't, I think
12 that's probably provable. But the other
13 two, if there was going to be any way to
14 prove it, it would have come out by now.

15 BY ATTORNEY CRAIG:

16 Q. If there was a photo of those two
17 together, would that be the type of evidence
18 that would prove that Donald Trump, in fact,
19 knew Ms. Carroll?

20 A. Absolutely not. If -- you know,
21 Trump moves around. Trump draws people
22 around like a magnet. His explanation --
23 and I don't know if it's true or not, he
24 said that was a receiving line where a bunch
25 of people came there and somebody caught a

1 must --

2 Q. Again, Mr. Fisher, try to keep it
3 to the questions.

4 A. Okay.

5 Q. In all this discussion we've had
6 about the evidence in this case, what part
7 of your experience in public relations
8 informs your opinions on the strength of the
9 evidence in this case?

10 A. There is no evidence in this case.
11 Tell me what evidence there is in this case?
12 There is no -- evidence is concrete
13 information or verification of anything.
14 There's no evidence in this case. What
15 evidence is there in this case? That's
16 rhetorical again.

17 There is only two people making
18 claims. There is absolutely no evidence one
19 way or the other in this case. There's just
20 two people that are making verbal claims
21 back and forth, claims or opinions or
22 accusations, whatever. I haven't seen any
23 concrete evidence of any kind in this case.

24 Q. You testified before that you
25 reviewed the depositions of both Ms. Carroll

1 and Mr. Trump from Carroll I; correct?

2 A. Yes, that's correct.

3 Q. Have you reviewed any of the other
4 depositions that were taken in this case?

5 A. No, none have been provided to me.
6 I didn't know there were any others.

7 Q. Have you reviewed any of the
8 documents that were produced by either side
9 in this case?

10 A. Yeah, I mean, the documents I
11 reviewed are -- which were provided to me --
12 some were from the plaintiffs and some were
13 on the defendants. Page 11.

14 Q. Besides those documents listed
15 under legal documents in your report, are
16 there other parts of the discovery record
17 that you reviewed in this case that you
18 didn't list there?

19 A. Absolutely not. Absolutely not.

20 When it comes to -- I might decide
21 whether to put a newspaper article down on
22 my list or something like that, but when it
23 comes to legal documents or any kind of
24 documents, I list -- like here. Under
25 page 11, legal documents. Answer. That's

1 defamation per quod. There's different
2 subsets of defamation, and this is a
3 separate one.

4 And I found it hard to believe in
5 the first thing, the first complaint, that
6 they didn't -- cause of action. The second
7 complaint they didn't either.

8 I thought that since it was thrown
9 out there in both complaints and also
10 mentioned in Ms. -- or Professor Humphreys'
11 original report, I don't know if it was in
12 the second, but she also mentioned it in the
13 second report that I thought that, you know,
14 to dot my Is and cross my Ts, I would
15 address that with a paragraph or two in
16 here, which I did.

17 Q. Are you an expert on the
18 requirements of pleading causes of action in
19 federal court?

20 A. No, I'm not.

21 Q. And you opined in here that
22 Mr. Trump's October, 2022, statement does
23 not constitute defamation per se; is that
24 correct?

25 A. No, no. Because he didn't -- I

1 mean, he didn't --

2 Q. Just yes or no.

3 A. No, no. It's obvious from the --
4 none of these relate to him.

5 Q. Are you aware that Mr. Trump moved
6 to dismiss Ms. Carroll's defamation claim in
7 Carroll II on that very basis?

8 A. No, I wasn't informed of that.

9 Q. And are you aware that Judge Kaplan
10 rejected that argument?

11 A. Judge Kaplan?

12 Q. Judge Kaplan is the judge in this
13 case?

14 A. Interesting. Judge Kaplan and the
15 law firm is Kaplan. That's interesting.
16 Any relation?

17 No, I was not aware. I said I
18 wasn't aware.

19 Q. Is it your opinion, understanding
20 now that Judge Kaplan rejected the argument
21 that this was not defamation per se, that
22 his decision was incorrect?

23 A. I'm sorry. Repeat that.

24 Q. I'll represent to you Judge Kaplan
25 rejected Mr. Trump's argument that his

1 statement was not defamatory per se.

2 A. So he's saying that it could be
3 defamation per se?

4 ATTORNEY SWIFT: Matt, if you can
5 just rephrase the question.

6 THE WITNESS: Yeah, because I'm
7 confused.

8 BY ATTORNEY CRAIG:

9 Q. So I will represent to you that
10 Mr. Trump moved to dismiss Ms. Carroll's
11 defamation claim in Carroll II arguing that
12 it was -- did not constitute defamation per
13 se. And Judge Kaplan rejected that argument
14 and refused to dismiss the complaint.

15 Given the opinion that you express
16 in your report, is it your position that
17 Judge Kaplan's decision was wrong in holding
18 that these statements did constitute
19 defamation per se?

20 A. Obviously not. I'm not a judge.
21 If this was -- if this was looked at in
22 court and the judge made a decision after
23 hearing both sides, I mean, I wasn't aware
24 of that, and I'll defer to the judge.

25 Q. So is it your position that your --

1 in other words, to make a decision.

2 And we're going to take a lunch
3 break now. I can't even focus on what
4 you're saying at this point. I haven't
5 eaten since 6 o'clock in the morning.

6 THE VIDEOGRAPHER: The time is now
7 12:33 p.m., and we are off the video
8 record.

9 (Lunch recess taken from
10 12:33 p.m. to 1:11 p.m.)

11 THE VIDEOGRAPHER: The time is now
12 1:11 p.m., and we are back on the video
13 record.

14 BY ATTORNEY CRAIG:

15 Q. Mr. Fisher, you conclude in your
16 report that plaintiff has benefited from,
17 quote, this public dispute. I'll direct
18 you, if you want to look at it, it's on
19 page 24 of Exhibit 1.

20 Is it your position that plaintiff
21 has benefited from her dispute with
22 Mr. Trump?

23 A. I believe so. I believe there are
24 extraneous factors that -- I said a net
25 benefit. I think my term was net benefit.

1 I think when you weigh what possible harm
2 there was to her from his comments and you
3 weigh that against some of the possible
4 positive benefits to her that came from him,
5 I think it's clear all things, you know,
6 being considered that she came out better
7 for this.

8 Q. And when you say possible harm and
9 possible positive benefits, why do you use
10 the term "possible"?

11 A. I think they're more real than
12 possible. I guess you can't -- I guess
13 there's no way you can make a declarative
14 judgment but I think that factoring in
15 common sense and logic, a lot of positive
16 things would have come out from his, for
17 lack of a better word, tirade against her
18 based on her comments that he raped her.

19 Q. Is there any data that supports
20 that conclusion?

21 A. Not data, no. There are no data.
22 It's just -- you know, it's just basic in my
23 assessment based on my background and
24 expertise and experience in the field of
25 communications particularly as it relates to

1 particularly with someone like Mr. Trump
2 that the effects of positive or negatively
3 that he has on segments of society based on
4 what he says and does.

5 Q. Are you aware of any literature
6 that supports the view that defamation might
7 be beneficial to the person about whom false
8 information has spread?

9 A. No. And as a matter of fact, I've
10 never made that -- in 60 cases of which I've
11 probably represented plaintiffs in 50 of
12 them, I've never made that kind of assertion
13 before. This is a new territory.

14 I think it's an unusual
15 circumstance, and I think that the facts
16 and, as I say, combined with common logic
17 would lead you to that inevitable
18 conclusion.

19 Q. And I take it you're unaware of any
20 literature that supports the view that rape
21 victims might benefit from being defamed by
22 their accuser?

23 ATTORNEY SWIFT: Objection to form.

24 THE WITNESS: Not being defamed by
25 their accuser, although that's generally

1 self-admittedly came forward because she
2 admired the women that came forward because
3 of Weinstein and these other people, and she
4 felt that they had the courage to do so and
5 she should as well.

6 Q. And it's your position that the
7 women who come forward and then are defamed
8 by their -- the person they've accused
9 experience a net benefit, positive change to
10 their reputation?

11 A. Yes, I do. I think so. I think
12 that -- I think the weight of -- every
13 person that's accused of rape is going to
14 shoot back at their accuser. I mean, that's
15 standard. They don't have the fame of
16 Mr. Trump. They don't have the
17 communications form of Mr. Trump. They
18 don't have the devoted following of
19 Mr. Trump.

20 I challenge you to name me one
21 person that's ever been accused of rape that
22 didn't turn around and attack his accuser.

23 So I think there's a lack of
24 validity -- not a lack of validity. I think
25 there's a lack of impact on someone to try

1 Because, quite frankly, I think it's human
2 nature -- don't ask me if I'm a clinical
3 psychologist. My wife is. I'm not. But I
4 think it's human behavior that someone that
5 accuses someone of something like that is --
6 has had a more sympathetic view of her than
7 the person that says I didn't do it. She's
8 lying. I didn't do it. She's crazy.

9 I think 80 percent of people --
10 that's my own. I don't have any data. I
11 think 80 percent would tend to side with the
12 woman who accused than some guy saying they
13 didn't do it.

14 Q. Can you think of any other scenario
15 in which you would take the position that
16 someone was better off after someone defamed
17 them in terms of their reputation?

18 A. Another person? Or what do you
19 mean by scenario? I'm sorry.

20 Q. Outside of the sexual assault and
21 rape allegation context, is there any other
22 context in which you believe that someone
23 would be better off after someone spread
24 false information about them?

25 A. Oh, yes. I think anything related

1 Again, I go back to saying this is
2 an unusual case. This is maybe a one in a
3 million type of case where I don't think
4 I've ever not only in expert witness work
5 but as a PR professional, I don't think I've
6 ever felt that the person that was a victim
7 of defamation was better off than they were
8 before it.

9 Q. So is there any professional
10 experiences that you're drawing upon to
11 reach your conclusions in this what you call
12 one in a million case?

13 A. Well, yes. I think the
14 professional experience is that every
15 case -- I mean, forget expert witness work,
16 although that's part of it obviously. I've
17 had 50, 60 cases. I think that -- 60.

18 I think going back to my 50 years
19 in public relations that -- yes. I've seen
20 the effects of reputation harm. I've seen
21 them on famous people. I've seen them on
22 unknown people. I've seen them in every
23 way, shape, or form. Not only with
24 individuals but with businesses.

25 So what I'm saying is this is a

1 Certified Stenographer.)

2 BY ATTORNEY CRAIG:

3 Q. The six newspaper articles we
4 talked about before, is there anything
5 besides those newspaper articles?

6 A. Well, reading her biography, her
7 profile.

8 Q. Where did you see her biography?

9 A. Well, I went online and saw
10 information about her. I told you I Googled
11 her. A gal like that, she had a couple of
12 pages of content about her on there, and I
13 looked at some of it for background. As I
14 said, I looked to see who she was, and I saw
15 nothing negative whatsoever about her, not
16 unrelated to the Trump case, but I saw
17 nothing in her background that was negative.
18 It appears she was a total professional and
19 viewed that way.

20 Q. So besides the articles you
21 mentioned before and the Googling you did,
22 anything else that you considered?

23 A. Yeah, these -- I have it in my
24 report here. These articles. I quote some
25 of the articles on the Trump case, the six

1 that I listed there. I quoted some of them
2 in my report and talked about the highly
3 laudatory comments that were made in those
4 articles about her after the fact. After
5 the suit.

6 Q. Is your entire understanding of
7 Ms. Carroll's reputation based on the
8 comments in those six articles?

9 A. Well, we already talked about
10 online I saw --

11 Q. So the six articles and the
12 Googling you did?

13 A. Yeah, the Googling for the most
14 part, yeah, and also in the complaint. The
15 complaint, the original complaint and the
16 other complaint talked about her image, her
17 reputation, talked about her
18 accomplishments.

19 I mean, it's all over the place. I
20 don't deny the woman -- I never heard of her
21 before the Trump case. I mean, I live in
22 L.A. She's in New York. I don't read Elle
23 magazine. So I didn't know who she was from
24 these two people when I walked in this room.

25 The point is I did do research on

1 ATTORNEY SWIFT: I'm sorry. Two
2 people talking over each other. Can we
3 go over that one more time, please.

4 BY ATTORNEY CRAIG:

5 Q. The question was this: So this is
6 the first case that you've used the concept
7 of a virtual shield against defamation; is
8 that correct?

9 A. Well, certainly the first time I've
10 ever used that phrase or that thought but,
11 yeah, I don't -- it's hard to think that
12 anyone has a shield against defamation per
13 se. But --

14 Q. Again, it's a yes-or-no question.

15 A. Yeah, yeah, it's yes.

16 Q. And are you aware of any
17 peer-reviewed literature that addresses the
18 concept of a virtual shield against
19 defamation?

20 A. No.

21 Q. And is it your position that a
22 well-known person with a positive reputation
23 cannot be harmed by false statements about
24 them?

25 A. No, I didn't say that across the

1 accusations. It's more involved with the
2 people involved and how each of these people
3 are viewed.

4 Q. You've written before that it can
5 take a lifetime to build a reputation and
6 only seconds to destroy it?

7 A. Oh, that's true.

8 Q. And you've actually included that
9 principle in almost every other expert
10 report you've offered?

11 A. When I'm representing the
12 plaintiff, yeah, and not when I'm
13 representing the defendant.

14 Q. Why wouldn't you include that
15 principle when you're representing the
16 defendant?

17 A. Because I'm not trying to make the
18 plaintiff's case for them. Why would I put
19 something in a report that is basically
20 making the other side's case? That would be
21 kind of idiotic, I think.

22 Q. I'm going to mark this as
23 Exhibit 3.

24 (Exhibit Number 3 was marked
25 for identification.)

1 Quinnipiac University poll from December 14,
2 2022; is that correct?

3 A. Yes.

4 Q. And did you review the actual
5 polling data, or did you see the results of
6 the poll reported somewhere?

7 A. I saw the results in a newspaper
8 article; I saw them.

9 Q. And do you recall what newspaper
10 article that was?

11 A. No, I don't. In fact, I backtrack.
12 I'm not even sure it was a newspaper
13 article. It must have been. It wouldn't
14 have been online like that; so I had to see
15 it in some form of a document. It probably
16 was a newspaper article. No, I didn't make
17 note of what it was. It was just a report.
18 Was probably an AP report, but I'm not sure.

19 Q. And do you know the actual question
20 that the Quinnipiac poll asked for which it
21 reported results?

22 A. Not exact wording, but the poll was
23 basically do they have a favorable view --
24 do they have a favorable view of Mr. Trump
25 or not. It was basically a view of what's

1 your approval of Mr. Trump.

2 Q. And do you know what the sample
3 size was?

4 A. No, I didn't.

5 Q. Do you know what the margin of
6 error was?

7 A. No, not specifically.

8 Q. And was there a reason you selected
9 this particular poll to rely upon?

10 A. Just mainly because it was the most
11 recent one I saw. At the time I wrote this
12 report, it was three weeks old or something
13 like that. And I thought this reflects the
14 current view according -- the Quinnipiac
15 poll is considered a fairly reliable poll.

16 Q. Sorry, I didn't mean to --

17 A. No, it's not like it's done by
18 Frank Luskin or someone, Frank whatever his
19 name was who was at Fox. It's an
20 independent poll. It's not looked upon as
21 favoring one side or the other.

22 Q. Have you considered any other
23 polling data in connection with your report?

24 A. No, no. I just thought that that
25 was pretty representative. It seemed to me

1 grain of salt, in other words, because they
2 know he's prone to excessive attacks.

3 Q. And earlier in your report you
4 state that the plaintiff, quote, was aware
5 that she was, quote, putting herself in the
6 crosshairs of one of the most powerful men
7 on the planet?

8 A. Yeah, her best friend told her that
9 when she -- she told two people. One of
10 them said go to the police department. One
11 said don't because he's rich and powerful
12 and has a lot of lawyers and why expose
13 yourself to that. And she basically said
14 she concurred with that opinion, that she
15 knew she would be going into the dragon's
16 mouth, so to speak, if she came forward.

17 Q. Do you think Ms. Carroll bears some
18 of the responsibility for the harm that
19 resulted from her accusations against
20 Mr. Trump?

21 A. Absolutely not.

22 ATTORNEY SWIFT: Objection to form.

23 THE WITNESS: Absolutely not. She
24 has a right to come forward and make the
25 accusation. I mean, you know, we don't

1 know if it's true or not. But, you
2 know, if it isn't true, then she's lying
3 and shouldn't have come forward. If it
4 is true, she certainly has the right to
5 come forward, that kind of thing.

6 At one point in time, 20 some years
7 ago, she decided it would be in her best
8 interest not to come forward. And then
9 as a result of occurrences that happened
10 a few years ago she decided that maybe I
11 should, and she did.

12 BY ATTORNEY ANDREWS:

13 Q. Have you looked at any data or
14 studies about how Mr. Trump's personality
15 informs the public's reception to things he
16 says?

17 A. I don't think I have to do studies
18 or anything like that. I mean, as I say,
19 Mr. Trump's been in the news for six years,
20 day in and day out. You don't need to do a
21 study to observe what goes on with him. The
22 purpose of study is because you're privy to
23 it on a day-to-day basis.

24 Q. How do you know how other people
25 respond to him based on his personality --

1 A. He's a public figure, Mr. Craig. I
2 talk to people all the time about him. I
3 talk to friends, relatives, family, business
4 colleagues, people on the street. I go on a
5 cruise, we talk about -- we meet strangers,
6 you talked about Trump. Trump is a highly,
7 highly visible figure that people like to
8 talk about. You don't have to do a study
9 when day in and day out over six years
10 you're talking to a broad cross-section of
11 people of all persuasions. I've talked to
12 Trump supporters. I've talked to people
13 that don't know his name almost, and I've
14 talked to people that hate him vehemently.

15 I've done a study. I've been in a
16 study for six years ever since he first ran
17 for president.

18 Q. And by study you mean those
19 conversations you just described?

20 A. Yeah, what more can you do in a
21 survey. I've talked to people in all walks
22 of life, and all areas of the country. In
23 fact in Europe. We do all of our cruises in
24 Europe. I've talked to people over there.
25 I've talked to old people, young people. I

1 conversations like anyone else in the United
2 States would have been having over the last
3 six years?

4 A. For the most part anyone else in
5 the United States has had over -- I haven't
6 since I was retained which was what? A
7 couple months ago? I haven't done any as an
8 expert. I haven't talked to people
9 specifically an expert because I didn't
10 feel -- I felt I had enough insight from
11 that.

12 No, just talking to people in
13 general, kind of water cooler conversations,
14 you know.

15 Q. And on this same page of Exhibit 1,
16 page 19, you refer to Mr. Trump's, quote,
17 long and very public history of accusations
18 by women -- let me just go down here.

19 A. The last bullet point.

20 Q. Yeah. Let me start over.

21 You write here, you refer to
22 defendant's long and very public history of
23 accusations by women and inappropriate
24 sexual behavior as well as his own
25 admissions in this area.

1 skirt. He admitted to that.

2 Q. Is that part of the Billy Bush
3 tape, or is that something different?

4 A. That was the Billy Bush tape. I
5 think the one about him -- I think that was
6 also on the Billy Bush tape about him
7 sitting next to a stranger and kiss them,
8 and they're not going to do anything.

9 I think I read the part about him
10 kissing anyone somewhere else as well. I
11 think that was mainly the whole brouhaha
12 that came when the Billy Bush tape came in.

13 Q. And you write on page 19, the same
14 page that we're on, under the header
15 Weinstein/Me Too phenomenon?

16 A. Yes.

17 Q. Quote, the environment and dynamics
18 of women reporting sexual assaults and rapes
19 changed dramatically in recent years
20 emanating from the Harvey Weinstein scandal
21 and movement spawned by Me Too, Time's Up.

22 A. Yeah.

23 Q. In drafting your report, what
24 sources did you consider in forming your
25 opinions with respect to the, quote,

1 environment and dynamics, close quote, of
2 reports of sexual assault and rapes?

3 A. No specific. That is just --
4 that's just from reading multiple --
5 listening and hearing multiple reports over
6 the years. I mean, I've -- like most people
7 I followed the Weinstein trials. I'm aware
8 of the Me Too. I read countless magazine
9 articles and listen to TV, radio over the
10 period of years talking about the impact
11 that the Weinstein thing had on people
12 coming forward.

13 And actually Cosby predated
14 Weinstein. But it was Weinstein that was
15 the big one. Over a period of years I've
16 been ongoing reading reports and information
17 relating to how women would now come
18 forward, and they were emboldened to come
19 forward.

20 Even Ms. Carroll is a perfect
21 example. She said that she claimed that
22 genesis of that was why she came forward.

23 Q. And the sort of reading magazine
24 articles and listening to radio that you
25 referenced, were you doing that as part of

1 prior to her lawsuit, but I became aware of
2 her professional accomplishments prior to
3 being contacted to serve as an expert
4 witness in this case.

5 Do you see that?

6 A. Yes, I do.

7 Q. So besides that sort of personal
8 experience you had had, did you -- is there
9 any data to quantify the media coverage that
10 Ms. Carroll received after Mr. Trump's
11 defamation as compared to before?

12 A. Well, I think, yes. I think if
13 you're just doing an analysis or Google or
14 something like that, you can see that there
15 weren't hardly any articles on her prior to
16 the Trump incident, for lack of a better
17 word, and now -- exponentially her
18 visibility has risen tremendously. I mean,
19 the bottom line -- I just used myself as an
20 example because I had never heard of her
21 before I started reading articles about
22 Trump being accused of rape and whatever.
23 And most of those articles, and I did
24 analysis in this report which is in the next
25 section, by the way, on 20 here is that the

1 study? No. From looking online and looking
2 at the first ten pages of her Google
3 presence, it was clear that there was a
4 tremendous increase in articles about her or
5 exposure than there was prior to that.

6 Q. By looking -- by your reference to
7 looking at the first ten pages of Google,
8 you just mean the nature of the search
9 results that you would see if you put in
10 E. Jean Carroll's name in Google?

11 A. Yeah, in other words, you know,
12 each page has 10 to 12 things on it and you
13 go through pages 2, 3, 4, 5.

14 You know, I saw other references to
15 Ms. Carroll but not nearly the weight of the
16 exposure she received after she came forward
17 to accuse Mr. Trump of rape.

18 Q. You referred in your earlier answer
19 to you did an analysis in this report which
20 is in the next section on page 20, and those
21 articles are highly favorable toward
22 Ms. Carroll. Are you referring just to the
23 three articles you talk about on page 20 and
24 carrying over to page 21?

25 A. Yeah, in other words, on page 20

1 it's those square points there touting her
2 background, article, and praise. In other
3 words, the bottom line is in reporting the
4 news, the news was that she accused him of
5 rape and he made some statements, and she
6 sued him for defamation. That's the news.

7 You know, any good reporter is
8 going to give background on the participants
9 in such a dispute. Trump you don't have to.
10 They mention -- but going beyond mentioning
11 she was a well-known author and had been a
12 columnist for Elle magazine. Some of them
13 went into making very complimentary remarks
14 about her.

15 Q. Besides these three articles, are
16 there any other articles that you considered
17 in connection with this part of your report?

18 A. Yeah, as I said earlier today, I've
19 seen -- I mean, a lot of these articles
20 were -- contained the same information. I
21 didn't -- I didn't -- I just used these as a
22 representative sample. I believe I saw
23 others that said nice things about her too,
24 you know, whatever. I mean, I don't have to
25 do pages on it. I gave some examples from

1 Q. And did you consider any other
2 sources of information besides those 10 to
3 12 articles and the three you selected from
4 those here in generating or drafting this
5 portion of your report?

6 A. No, no. I don't think so. I was
7 using the media. I think the media is a
8 good harbinger of what is out there. I
9 think that's the job of the media is to
10 reflect what's going on in the world and
11 society and not only to report the news but
12 give perspective about the news background,
13 interpretation. That's why you have
14 editorials, columns, commentary, that kind
15 of thing. You don't only report the news
16 but to give insight and perspective on it.

17 Q. Is it your opinion that being known
18 as a rape victim of a powerful person is a
19 positive reputational characteristic?

20 ATTORNEY SWIFT: Objection to form.

21 THE WITNESS: I would say that
22 it's -- no, no. I don't think it's --
23 I'm sure somebody would -- something
24 somebody would not want on their résumé
25 per se. But the point -- all I'm saying

1 record.

2 (Recess taken from 2:59 p.m. to
3 3:08 p.m.)

4 THE VIDEOGRAPHER: The time is now
5 3:08 p.m., and we're back on the video
6 record.

7 BY ATTORNEY CRAIG:

8 Q. So, Mr. Fisher, if you want to turn
9 to page 22 of your report at Exhibit 1, you
10 see there's a section that has the header,
11 Reputation Repair Program?

12 A. Yes.

13 Q. And you note in here that at the
14 bottom of -- sorry. Right above that
15 section you say: While I attribute the
16 following mostly to her first report, the
17 content from my brief review from her second
18 report was the same in both her reports.

19 And then you go on to the section
20 entitled Reputation Repair Program.

21 Do you see that?

22 A. Uh-huh.

23 Q. Is it accurate to say that the text
24 of this with the exception of that one
25 paragraph on page 24 draws from your first

1 report?

2 A. Yes, yes.

3 Q. And so this is written,
4 specifically concerns the reputation repair
5 program that Professor Humphreys developed
6 in her Carroll I report?

7 A. Yeah. Most of this text was in my
8 rebuttal report. It's just since I was
9 doing an overview of the entire case, I
10 thought I should have a section in here
11 about her report. But most of this is old
12 ground covered in our first two depositions.

13 Q. And, in fact, the citations in this
14 section are to pages in Professor Humphreys'
15 first report --

16 A. Correct.

17 Q. -- from Carroll I?

18 A. Correct. 100 percent, yes.

19 Q. Is there anything different sort of
20 in substance between what's in this report
21 and then what's in your prior Carroll I
22 report?

23 A. No, I don't believe so. I think
24 that -- I mean, obviously this is only an
25 excerpt from my first report because my

1 first report was, what, 10, 12 pages. I
2 just put out -- basically from the first
3 report I just pulled out sort of the gist
4 of, you know, the important points from that
5 first report. I added in a paragraph just
6 referencing the second report which you saw.

7 And so there's no real new ground
8 break in that. It's just I thought if I was
9 doing a comprehensive report on the whole
10 case, I would have had to add in, you know,
11 something related to their expert.

12 Q. Were there any additional materials
13 that we didn't cover --

14 A. No.

15 Q. -- in your last deposition --

16 A. No.

17 Q. Let me just get the question out.

18 Are there any materials that
19 weren't addressed or covered in your last
20 deposition that you considered before
21 including this section in your Carroll II
22 report?

23 A. No, no. As I said, what I was
24 trying to do was just to kind of summarize
25 the main points I had in the -- relating to